IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

227 **CRWP-11312-2023**
Reserved on: 25.01.2024
Date of Pronouncement: January 31, 2024

VIJAY **-Petitioner**

V/S

STATE OF HARYANA AND ORS. **-Respondents**

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present : Mr. R.S. Dhull, Advocate
for the petitioner.

Mr. Yuvraj Shandilya, A.A.G., Haryana.

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KULDEEP TIWARI, J.

1. Through the instant criminal writ petition, as filed under Article 226/227 of the Constitution of India, read with Section 3 of The Haryana Good Conduct Prisoners (Temporary Release) Act, 2022 (hereinafter referred to as the 'Act of 2022'), the petitioner seeks quashing of the impugned order dated 18.10.2023 (Annexure P-1), whereby, the respondent No.4, has declined to grant regular parole to the petitioner. In addition, the petitioner also seeks issuance of directions upon the respondent(s) concerned to temporarily release him on regular parole for a period of 10 weeks.

2. The petitioner has been convicted by the learned Additional Sessions Judge, Kurukshetra, through drawing a verdict of conviction on 20.01.2015, in case FIR No.224 dated 17.10.2011, registered at P.S. KUK, District Kurukshetra. Consequent to the drawing of the verdict of conviction, the petitioner has been sentenced to undergo rigorous imprisonment for life.

REASONS RECORDED IN THE IMPUGNED ORDER (ANNEXURE P-1) FOR DECLINING PAROLE

3. While undergoing the sentence (supra), as imposed upon him, the petitioner applied for grant of regular parole for 10 weeks, however, the respondent No.4, through drawing Annexure P-1, which encompasses the impugned order dated 18.10.2023, declined the request of the petitioner for his being released on parole.

4. A bare glance at the impugned order dated 18.10.2023 (Annexure P-1) makes revelations that the decision to decline parole to the petitioner was anchored upon the petitioner being a hardcore criminal, inasmuch as, he is/was involved in 22 criminal cases. What further weighed with the respondent No.4, i.e. the author of Annexure P-1, to draw the impugned declining order, was that, while the petitioner was undergoing custody in District Jail Sonepat, a mobile was recovered from him on 05.05.2018, which led to registration of FIR No.360/2018, under Section 42-A of Prisons Act, at P.S. City Sonipat. Not only this, while being imprisoned in District Jail, Yamuna Nagar, again a mobile was recovered from the petitioner on 09.09.2019, which formed the bedrock for registration of FIR No.1083 dated 09.09.2019, under Section 42-A of the Prisons Act, at P.S. City Jagadhri.

5. The events recorded hereinabove, vis-a-vis, recovery of mobile from possession of the imprisoned petitioner, and that too on dual occasions, led the respondent No.4 to, in terms of Section 2(1)(g)(iv) of the Act of 2022, draw an inference that the petitioner falls within the definition of “hardcore convicted prisoner”. Moreover, since the petitioner had not, in terms of Section 6(3) of the Act of 2022, completed 5 years of sentence

since the commission of his last jail offence, therefore, the respondent No.4 was propelled to decline the request of the petitioner for regular parole.

ANALYSIS

6. Before embarking upon the process of evaluating the validity of the impugned order (Annexure P-1) and penning down any opinion upon the instant petition, it is deemed imperative to capture an overview of some significant and relevant legal provisions and propositions.

7. The definition, as assigned to "hardcore convicted prisoner" in Section 2(1)(g)(iv) of the Act of 2022, is extracted hereinafter:-

> *"2.(1)(g)(iv)* ***"hardcore convicted prisoner" means any prisoner-*** *who has been found in possession or detected of using wireless communication device or its components or any unauthorised electronic device inside the jail premises;"*

8. Section 6(3) of the Act of 2022, which became banked upon by the respondent No.4 while drawing the impugned order (Annexure P-1), is also extracted hereinafter:-

> *6(3). Notwithstanding anything contained in sub-section (1), a hardcore convicted prisoner, who has not been awarded death penalty or life imprisonment till natural life and has completed five years of his sentence (including maximum two years under trial period), without committing any major jail offence or any cognizable offence during the last five years, shall be entitled for emergency parole or regular parole or furlough at par with convicted prisoners. Such period of five years shall be counted from the date of his latest offence or act which falls under the category of hardcore convicted prisoner:*
>
> *Provided that a hardcore convicted prisoner who has been sentenced for imprisonment till natural life shall be eligible for emergency parole or regular parole at par with convicted prisoners only after completion of seven years of imprisonment after conviction:*
>
> *Provided further that if the hardcore convicted prisoner so*

> *released temporarily violates any condition of parole or furlough or commits any cognizable offence, he shall be debarred from such release for next three years."*

9. Since the impugned order (Annexure P-1) ensues from the petitioner being falling within the definition of "hardcore convicted prisoner", therefore, it is deemed imperative to refer to a Full Bench judgment of this Court, as rendered in case titled as ***"Kulwant alias Monu versus State of Haryana and others", CRWP-1890-2020,*** Decided on: 26.08.2022. In this judgment, a Full Bench of this Court has held that the bar for release of a hardcore prisoner on parole, owing to recovery of mobile, would come into operation only after the conviction of such hardcore prisoner is secured under Section 42 of the Prisons Act. The relevant extract of this judgment is reproduced hereinafter:-

> *"42. We are in disagreement with the reasoning because the bar for parole or furlough to a hardcore prisoner would start either on conviction under sections 42 or 42-A of the Prisons Act, 1894, by the concerned trial court or upon determination of such offence under Section 45(12) of the Prisons Act, 1894 and also when the Jail Superintendent has awarded such a prisoner a punishment under section 46(4), and further that such punishment has been judicially appraised by the concerned District and Sessions Judge as mandated in section 5A(2) of the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988."*

10. Furthermore, in case titled as ***"Rakesh Chehal Versus State of Haryana and others", CRWP-1949-2022,*** Decided on: 29.07.2022, a Division Bench of this Court has made the hereinafter extracted observations:-

> *"In the reply there is no rebuttal to such assertion. Petitioner was seeking furlough to meet his family members. In the impugned order it has been observed that the prisoner's family can meet him in jail*

> *as per rules. We do not approve of such reasoning. One of the clear objectives of releasing a prisoner on furlough is to enable the inmate to maintain continuity with his family life and to deal with the familial and social matters. Such objective is part of the reformative process. A convict being released on furlough to have interaction and company of his family members in the confines of his house, cannot be equated to the family members meeting up with the inmate/convict within the jail premises."*

REASONS FOR ALLOWING THE INSTANT PETITION

11. A conjoint reading of the hereinafter extracted Section 2(1)(g)(iv) and Section 6(3) of the Act of 2022, elucidates that though recovery of mobile from possession of a prisoner brings him within the domain of "hardcore convicted prisoner" and curtails the chances of his being enlarged on parole, however, even such a hardcore prisoner is also entitled for regular parole, upon completion of five years of imprisonment, since the commission of his last offence.

12. In the instant case, the reply dated 16.01.2024, as furnished by the learned State counsel, discloses that the last jail offence, for which he was booked, was committed in the year 2019, which formed the bedrock for registration of FIR No.1083 dated 09.09.2019, under Section 42-A of the Prisons Act. However, what further erupts from the reply (supra), is that, the FIR (supra) has not yet culminated in conviction of the petitioner, rather the same is yet pending adjudication before the learned Magistrate concerned. Therefore, when the petitioner has not yet been convicted under Section 42 of the Prisons Act, consequently, in terms of the judgment rendered in case of ***Kulwant alias Monu (supra),*** the petitioner is well entitled to avail the concession of regular parole.

13. Insofar as the criminal antecedents of the petitioner are

concerned, which also became relied upon by the respondent No.4 while drawing the impugned order (Annexure P-1), the reply (supra) makes it evident that though the petitioner is involved in 22 other criminal cases, however, in majority of those cases, either he has been acquitted/discharged or is on bail.

14. In view of what has been discussed hereinabove, this Court deems it fit and appropriate not to curtail the liberty of the petitioner.

15. In sequel, after allowing the present petition, the petitioner is ordered to be released from the prison concerned, on 5 weeks' regular parole, by the Superintendent of the prison concerned, from the period commencing from the morning of 05.02.2024 to the evening of 11.03.2024. On expiry of the above term of parole, the petitioner shall forthwith re-step into the prison concerned and if he does not do so, thereupon the SHO of the jurisdictional police station concerned shall forthwith arrest the petitioner and thereafter, shall produce him before the learned Judicial Magistrate concerned.

16. Personal surety bonds comprised in a sum of Rs.50,000/- are ordered to be furnished by the petitioner, before the Superintendent of the prison concerned.

17. The petition is allowed in the above terms.

(KULDEEP TIWARI)
JUDGE

January 31, 2024
devinder

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No